

MEMORANDUM

DATE: April 27, 2010

TO: Katherine Vasquez, Rules Consultant
DSHS Rules and Policies Assistance Unit

FROM: John Gaskell, Program Manager
Policy, Program Development and Training Unit
Residential Care Services

SUBJECT: Small Business Economic Impact Statement and Cost-Benefit
Analysis for Proposed Amendments to Chapter 388-101 WAC,
Certified Community Residential Services and Supports

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services' Residential Care Services (RCS) is proposing amendments to Chapter 388-101 WAC, Certified Community Residential Services and Supports.

The purpose of this proposed rule making is to implement Chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and Engrossed Second Substitute House Bill 2284 (E2SHB 2284) Chapter 361, Laws of 2007.

Highlights of proposed changes:

- Revisions to be consistent with the training requirements in Chapter 388-112 WAC.
- Revisions to implement the finger print-based background check requirements effective January 1, 2012.
- Clarify requirements in the criminal history background check section.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS). Under RCW 19.85.025 (3), preparation of a SBEIS is

not required when the proposed rule adopts or incorporates by reference without material change Washington state statutes and for rules with content dictated by statute. A SBEIS is required when there is a disproportionate impact on small businesses.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS analyzed these proposed rules and concludes that the proposed rule content is dictated by statute. Under RCW 74.39A.055, the statute states that the cost of these criminal background checks shall not be passed on to the workers or their employers. The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in Chapter 388-112 WAC.

RCS does not believe that the proposed rules will result in any job losses or gains for certified community residential services providers. RCS concludes that the proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS

RCS has determined that some of the proposed rules are "significant legislative rules" as defined by the legislature. As required by RCW 34.05.328(1) (c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

Costs

- DSHS shared the draft language and draft small business economic statement and cost benefit analysis with interested parties who are on the RCS Certified Community Residential Services and Supports mailing list.
- In addition, the draft language and draft small business economic statement and cost benefit analysis was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.
- DSHS' process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, only one comment was received about costs and it had to do with the cost savings statement in the draft SBEIS/CBA being confusing. As a result, the department has accepted this comment and removed the cost savings statement from the SBEIS/CBA.

- The statute states that the cost of the fingerprint checks will not be passed on to the individuals or the service provider.
- The long-term worker training requirements are required by RCW 74.39A.073 and Chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in Chapter 388-112.

COST SAVINGS

Although the proposed rules may not save providers or the department money, they do have other anticipated benefits.

OTHER BENEFITS

The proposed rules result in several benefits which include:

- The amendments are consistent with current laws;
- The service provider will have more information to assist them in making hiring decisions; and
- Clients will ultimately benefit from a better trained workforce and potentially protected from staff with criminal histories.

CONCLUSION

RCS concludes that the benefits of the proposed amendments exceed the probable cost.

These rules continue to implement state laws and regulations related to certified community residential service providers. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at gaskejw@dshs.wa.gov or by telephone at (360) 725-3210 if you have questions.